DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-81,929]

JOY GLOBAL, INC.
ALSO KNOWN AS JOY TECHNOLOGIES, INC.
INCLUDING ON-SITE LEASED WORKERS FROM
ALL SEASONS TEMPORARIES AND MANPOWER
FRANKLIN, PENNSYLVANIA

Notice of Negative Determination
on Reconsideration

On December 6, 2012, the Department of Labor (Department) issued a Notice of Affirmative Determination Regarding Application for Reconsideration applicable to workers and former workers of Joy Global, Inc., also known as Joy Technologies, Inc., (subject firm), including on-site leased workers from All Seasons Temporaries and Manpower, Franklin, Pennsylvania (subject facility).

The group eligibility requirements for workers of a Firm under Section 222(a) of the Act, 19 U.S.C. § 2272(a), can be satisfied if the following criteria are met:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated; and

(2)(A)(i) the sales or production, or both, of such firm have decreased absolutely;

(ii)(I) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(II) imports of articles like or directly competitive with articles—

(aa) into which one or more component parts produced by such firm are directly incorporated, or

(bb) which are produced directly using services supplied by such firm,
have increased; or

(III) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased; and

(iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

(B)(i)(I) there has been a shift by such workers' firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm; or

(II) such workers' firm has acquired from a foreign country articles or services that are like or directly competitive with articles which are produced or services which are supplied by such firm; and

(ii) the shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers' separation or threat of separation.

Initial investigation

On August 29, 2012, a representative from International Association of Machinists and Aerospace Workers, District Lodge 98, filed a petition for Trade Adjustment Assistance (TAA), dated August 25, 2012, on behalf of workers and former workers of the subject facility. Workers are engaged in the production of underground mining machines and component parts. The workers are not separately identifiable by product line.

The negative determination was based on the findings that the subject firm had not experienced a decline in the sales or production of mobile underground mining machines and repair components during the period under investigation (the representative base period is August through December 2010, full year 2011, and January through August 2012; hereafter referred to as "period under investigation" or "relevant time period"); that the subject firm did not shift the production of these articles, or like or directly competitive articles, to a foreign country or acquire the production of these articles, or like or directly competitive articles, from a foreign country; that the subject firm is not a Supplier to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, 19 U.S.C. § 2272(a); that the subject firm does not act as a Downstream Producer to a firm (or subdivision, whichever is applicable) that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, 19 U.S.C. § 2272(a); and that the workers' firm has not been publically identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in an affirmative finding of serious injury, market disruption, or material injury, or threat thereof. As such, the Department issued a Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on October 16, 2012.

Reconsideration investigation

By application dated November 8, 2012, the petitioner requested administrative reconsideration of the Department's negative determination regarding the eligibility of the subject worker group to apply for adjustment assistance.

In the application, the petitioner stated that foreign competition had an impact on the subject firm, as well as its suppliers and downstream vendors, and that the subject firm outsourced components and manufacturing mining equipment that were previously made in the United States. The petitioner also alleged that TA-W-81,929 is similar to TA-W-57,700 and TA-W-71,174. Additionally, the petitioner stated that the shift in manufacturing of parts to Mexico and China caused the cessation of manufacturing of these parts at the subject facility and referred to a vendor in Mexico that supplies the subject firm with component parts.

On December 6, 2012, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration in order to conduct further investigation to determine worker eligibility. The Department's Notice was published in the Federal Register on January 4, 2013 (78 FR 774).

In the course of the reconsideration investigation, the Department confirmed previously-collected information, sought clarification of previously-submitted information, and obtained additional facts and data from the subject firm.

The Department confirmed that Section 222(a)(1) has been met

because a significant number or proportion of the workers at the subject facility have become totally separated.

The Department confirmed that Section 222(a)(2)(A)(i) was not met because sales and production at the subject facility did not decline during the period under investigation. Rather, sales and production either increased or remained stable in 2011 from 2010 levels and during January through August 2012 when compared to the corresponding period in 2011. As such, any increase in imports is irrelevant. Consequently, the Department did not conduct a survey of the subject firm's major customers and did not contact the vendor in Mexico identified in the request for reconsideration.

Further, the Department confirmed that Section 222(a)(2)(B) was not met because the subject firm did not shift the production of mining equipment or components, or like or directly competitive articles, to a foreign country or acquire the production of such articles, or like or directly competitive articles, from a foreign country. Although the subject firm confirmed the existence of affiliated production facilities in foreign countries, some foreign facilities did not produce like or directly competitive articles during the relevant period and others produced articles that are like or directly competitive with articles produced at the subject facility prior to the start of the period under investigation.

The petitioner alleges that the case at hand is similar to TA-W-57,700 (Joy Technologies, Inc., DBA Joy Mining Machinery,

Mt. Vernon Plant, Mt. Vernon, Illinois; certification issued on January 26, 2009). The certification of TA-W-57,700 was based on a shift in production of mining machinery components (crawler track frames) to Mexico which contributed importantly to subject worker group separations.

During the reconsideration investigation, the Department confirmed that no shift in production of mobile underground mining machines or component parts (or the repair of component parts) to a foreign country contributed importantly to worker separations at the subject facility. Production at affiliated foreign facilities is either of neither like nor directly competitive articles, or exclusively for specific foreign markets. Additionally, the articles that shifted to Mexico in TA-W-57,700 (crawler track frames) are not like or directly competitive with those produced at the subject facility.

The petitioner also alleged that the case at hand is similar to TA-W-71,174 (General Electric Company, Transportation Division, Erie, Pennsylvania; certification issued on July 23, 2010). The certification of TA-W-71,174 was based on a relative shift in production of like or directly competitive articles to a foreign country which contributed importantly to subject worker group separations.

In TA-W-71,174, General Electric Company operated foreign facilities that produced articles like or directly competitive with those produced by the subject worker group and production at

the foreign facilities increased during the same period that domestic production of these articles declined.

During the reconsideration investigation, the Department requested that the subject firm provides information regarding its foreign facilities that produce articles like or directly competitive with those manufactured by the workers of the subject facility during the relevant period.

The subject firm produced information that revealed that continuous miners are also produced at a facility of the subject firm in South Africa. Production at the South African facility, however, increased only marginally. As such, the Department determined that the production at the foreign facility did not contribute importantly to subject worker group separations at the subject facility.

During the reconsideration investigation, the Department did not receive information that either Joy Global, Inc. or Joy Technologies, Inc. was publically identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in an affirmative finding of serious injury, market disruption, or material injury, or threat thereof.

CONCLUSION

After careful review of the Trade Act of 1974, as amended, applicable regulation, and information obtained during the initial and reconsideration investigations, I determine that workers and

former workers of Joy Global, Inc., also known as Joy Technologies, Inc., including on-site leased workers from All Seasons Temporaries and Manpower, Franklin, Pennsylvania, are ineligible to apply for adjustment assistance.

Signed in Washington, D.C., on this 8th day of May, 2013

DEL MIN AMY CHEN
Certifying Officer, Office of
Trade Adjustment Assistance
4510-FN-P

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